

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of The Commission,) Application No. C-3025
on its own motion, seeking to)
conduct a 90-day proceeding as)
contemplated by the Federal Com-) ORDER OPENING 90-DAY
munications Commission in its) PROCEEDING
Triennial Review order adopting)
new rules for network unbundling)
obligations.) Entered: October 7, 2003

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

On February 20, 2003, the Federal Communications Commission (FCC) announced that it was adopting rules in its Triennial Review proceeding that will impact how incumbent local exchange carriers (ILECs) meet their statutory obligations to make unbundled network elements (UNEs) available to competitive local exchange companies (CLECs).

Although the FCC's written order memorializing its decisions (FCC 03-36, Triennial Review Order, or FCC Order¹) was not released until August 21, 2003, key findings were announced in a press release on February 20, 2003. The FCC Order was officially published in the Federal Register on September 2, 2003, to be effective on October 3, 2003.

In its order, among other matters, the FCC made a presumptive finding that local circuit switching for business customers served by high-capacity loops will no longer be required to be made available as a UNE. The treatment was further detailed at ¶¶ 451 through 458 of the FCC's Order. The FCC described this as the "enterprise market" and found that competition in these enterprise markets would not be impaired if the local switching UNE were unavailable.

The FCC provided that a state commission would have 90 days from the effective date of its order to rebut the presumption of "no impairment" as it affects enterprise switching in an individual state. In light of the FCC Order, the Nebraska Public Service Commission (Commission) is of the opinion that it should initiate a 90-day proceeding to address the FCC's

¹ *Review of the Section 251 Unbundling obligation of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provision of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunication Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003).

presumption. However, the Commission will only proceed with its review if a CLEC files a petition and evidence indicating Commission consideration is required.

In order for the Commission to have adequate time to complete a 90-day proceeding in response to a CLEC petition rebutting the national presumption, the Commission will establish an October 17, 2003, deadline for filing any such petitions. Further, any such petition should include evidence, in the form of prefiled testimony and exhibits, supporting the request that the national presumption be overridden.

If such a petition is filed, the Commission will establish a specific procedural schedule to ensure the 90-day requirement can be met.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that a 90-day proceeding should be opened for the purposes set forth above.

IT IS FURTHER ORDERED that interested parties may file a petition with the Commission rebutting the national presumption on or before October 17, 2003. Interested parties shall file one original, five paper copies and an electronic version for posting to the Commission's website.

MADE AND ENTERED at Lincoln, Nebraska, this 7th day of October, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director